



## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** October 1, 2012

**SUBJECT: ZC 12-06: Final Report - Proposed Text Amendment to Chapter 27**

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### **I. RECOMMENDATION**

The Office of Planning (OP) recommends approval of the proposed amendments to 11 DCMR Chapter 27 as outlined at the end of this report. The amendments would clarify and streamline the review process for permit applications to modify existing installations by wireless providers.

### **II. BACKGROUND and COMMISSION's CONCERNS**

On July 9, 2012, the Commission set down for public hearing the Office of Planning's ("OP") petition for amendments to Section 2711 of Chapter 27, Antennas. As presently written Section 2711 requires the Zoning Administrator to wait until an OP report is received, or thirty days has passed before acting upon an application to permit antenna towers, monopoles, and non-exempted antennas. The proposed amendment would clarify that this waiting period also applies to modifications to existing facilities, but exempts upgrades and maintenance of existing permitted antenna sites, as well as for the installation or maintenance of antenna-related equipment cabinets.

Increased data demands of consumer wireless equipment continue to diminish the capacity of existing wireless cell sites, which in turn has led to extensive modification involving antenna replacements and power cabinet upgrades. As such, OP and DCRA have experienced substantial increase in permit requests by wireless providers for these upgrades. The Commission requested examples of original installations, proposed upgrades and the comparative review processes of OP and DCRA (Attachments I, II and III).

The Commission also expressed concern that consumer dish antennas installations were observed in the front of residential buildings, and thus visible from the street frontage. Attached are the Federal Communications Commission (FCC) Guidelines for Consumer Owned Satellite Antennas and Dishes. We have asked the Office of the Attorney General (OAG) to opine on this. The guidelines are attached for reference.

### **III. OP REVIEW**

Section 2711.1 requires that the Zoning Administrator not take final action on an application to permit an antenna tower, a monopole or an antenna not exempted by § 2702...until a report is received from OP or thirty days has passed, whichever occurs first.. This section establishes that plans for the installation of all matter of right antennas and their related equipment must be first reviewed by OP prior to the permit review process by DCRA.



Upgrades of the existing installations on rooftops, towers, monopoles and within stealth structures typically involve replacement of older antennas with newer models in existing locations, addition of new antenna(s) to boost capacity, maintenance and/ or changes to the related equipment cabinets or combinations thereof. OP has observed that the majority of requests involving in-kind replacements and some antenna additions in previously permitted collocation sites have no negative visual impacts and as such do not violate the intent of the regulations.

DCRA’s Zoning Review staff also determine whether the submitted plans are in compliance with §§ 2703 through 2706, 2707, 2708 and 2715 prior to issuance of permits. OP’s report is similar in format to DCRA’s Antenna Review Form, which is completed by the applicant and submitted with their permit plans. The OP report checks off whether the antenna installation complies with the applicable requirements of Chapter 27. However, *OP’s report is not intended to be a form of final approval, nor does it provide any relief from any other zoning requirement (Sample report attached).* DCRA’s Zoning Review staff has the final authority on whether the application satisfies these requirements. Thus, OP’s review is redundant.

The following outlines the matter-of-right installations prior to permitting by DCRA

Section	Establishes the conditions for:	OP Report Required prior to DCRA permit	DCRA Zoning Review
2703	ground mounted antennas	✓	✓
2704	roof mounted antennas	✓	✓
2705	building mounted antennas	✓	✓
2706	stealth mounted antennas	✓	✓
2708	antennas mounted on antenna towers and monopoles	✓	✓
2707	antennas exempted from the requirements of §§ 2703 through 2706.	X	Determines whether exempt prior to issuance of permit
2715	Equipment cabinet or shelter	Does not specifically require OP report but is requested periodically by ZA staff	Reviews as a roof top installation consistent with roof top regulations when installed on a roof.  If ground mounted, subject to other requirements of the building code.

In collaboration with the Zoning Administrator (ZA) and OAG, the following clarifications are proposed to the advertised text. The originally proposed text could be interpreted as only requiring OP reviews of non-exempted antenna modification, and did not also reference antenna towers and monopoles. A reference to these structures is now proposed. OP also met with service providers who requested the number of antennas per sector be five, reflecting the industry standards.

Proposed at Setdown	Current Proposal
<p>2711.1 The Zoning Administrator shall not take final action on an application to permit an antenna tower, a monopole, or an antenna not exempted by § 2707, <b>or for the modification of an existing antenna not exempted by 2711.4</b>, until a report is received from the Office of Planning or thirty (30) days have passed since the application was submitted to the director of the Office of Planning, whichever occurs first.</p>	<p>2711.1 The Zoning Administrator shall not take final action on an application to permit <b>or modify</b> an antenna tower, a monopole, or an antenna not exempted by § 2707. <del>or for the modification of an existing antenna not exempted by 2711.4</del>, until a report is received from the Office of Planning or thirty (30) days have passed since the application was submitted to the director of the Office of Planning, whichever occurs first. <b>This requirement does not apply to the modification described in § 2711.4.</b></p>
<p><b>2711.4 A report from the Office of Planning is not required for the:</b></p> <ul style="list-style-type: none"> <li>(a) <b>Modification of an existing antenna site, that involves a one-to-one replacement of antennas or an increase in the number of antennas for no more than four (4) antennas per mount or sector, and provided that there would be no change to the permitted locations on roof tops or increase in the height of the antennas; or</b></li> <li>(b) <b>Installation or maintenance of antenna-related equipment cabinets and shelters consistent with the roof structure regulation;</b></li> </ul>	<p><b>2711.4 A report from the Office of Planning is not required for the:</b></p> <ul style="list-style-type: none"> <li>(a) <b>Modification of an existing antenna site, that involves a one-to-one replacement of antennas or an increase in the number of antennas for no more than <b>five (5)</b> antennas per mount or sector, and provided that there would be no change to the permitted locations on roof tops or increase in the height of the antennas; or</b></li> <li>(b) <b>Installation or maintenance of antenna-related equipment cabinets and shelters consistent with the roof structure regulation.</b></li> </ul>

AMEND CHAPTER 27 WITH NEW TEXT IN **BOLD**

2711 OFFICE OF PLANNING REPORT

2711.1 The Zoning Administrator shall not take final action on an application to permit **or modify** an antenna tower, a monopole, or an antenna not exempted by § 2707, until a report is received from the Office of Planning or thirty (30) days have passed since the application was submitted to the director of the Office of Planning, whichever occurs first. **This requirement does not apply to the modification described in § 2711.4.**

2711.2 The Director of the Office of Planning and the Zoning Administrator may agree to lengthen the time period indicated in § 2411.1, but in no event shall the review period exceed sixty (60) days.

2711.3 The report of the Office of Planning shall provide specific criteria and information sufficient to enable the Zoning Administrator to determine whether the antenna complies with the applicable requirements of this chapter.

**2711.4 A report from the Office of Planning is not required for the:**

- (a) **Modification of an existing antenna site, that involves a one-to-one replacement of antennas or an increase in the number of antennas for no more than five (5) antennas per mount or sector, and provided that there would be no change to the permitted locations on roof tops or increase in the height of the antennas; or**

**(b) Installation or maintenance of antenna-related equipment cabinets and shelters consistent with the roof structure regulation.**

**IV. PUBLIC WRITTEN COMMENTS**

Donohue and Stearns, PLC submitted comments dated July 9, 2012. OP consulted with OAG and offers the following response:

- 1) *The proposed amendments incorporate specific parameters such as percentage increases for modifications in reference to both antennas, support structures, cabinets and compounds;*

**Response:** The concerns expressed in this submission concern a recent act of Congress that prohibits local jurisdictions from denying building permits for the collocation or replacement of antennas if the modification "does not substantially change the physical dimension of such tower or base station". The term "substantially change" is not defined in the act, but is defined in other sources and it suggested that the Zoning Commission incorporate the prohibition and the definition. This not only goes beyond the scope of this proceeding, which proposed to only permit the Zoning Administrator to grant certain modifications without first waiting for an OP report, but goes beyond the scope of the Zoning Regulations, which do not exist to implement federal regulation directed at building code officials.

- 2) *Use of the term existing antenna site be defined, and should be interpreted to also include the spectrum of support structures, including flagpoles, light poles, utility poles, church steeples etc.; and*

**Response:** OP will consider this as part of the current Zoning Review.

- 3) *It should be made clear whether modification requests meeting the standards of § 2711.4 include those submitted by providers already installed on a facility or new carriers proposing to collocate.*

**Response:** Such an amendment is not necessary. Subsection 2711.4 relates back to § 2711.4 which simply refers to applications to modify existing facilities. The Building Code specifies who can make such applications. OP simply receives the applications. If the application is for one of the exempted types of modifications, no report will be generated.

**ATTACHMENTS**

- I. Examples of modification of permitted collocations
- II. OP Antenna Review Form
- III. DCRA's Antenna Review Form
- IV. FCC Guidelines for Consumer Antennas and Satellite Dishes

### I. EXAMPLES OF MODIFICATIONS OF EXISTING PERMITTED COLLOCATIONS

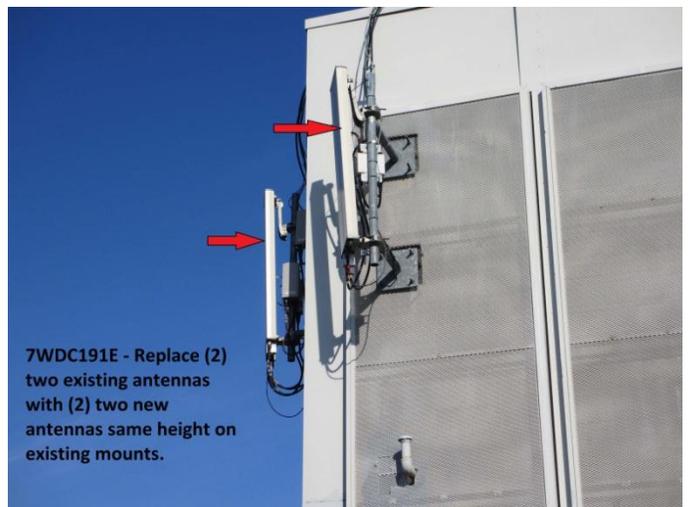
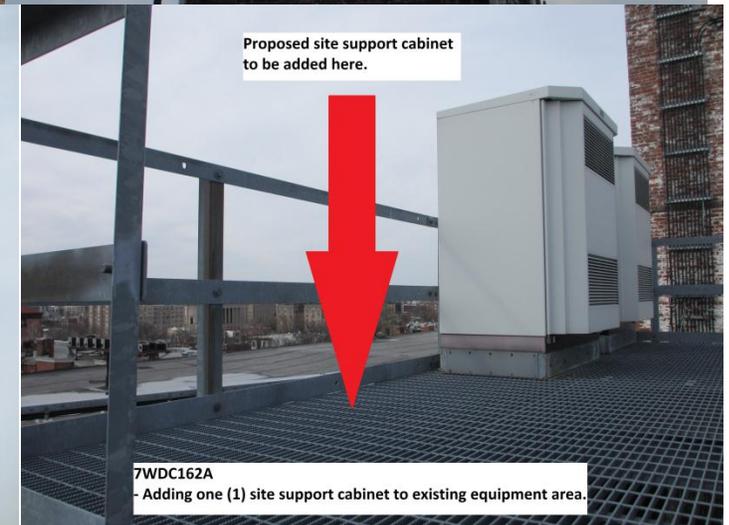


TABLE OF SUBMISSIONS

Site ID	Site Type	Address	Zone	OP Approved Antennas	Ant. height	Existing Antennas	Proposed replacement	Proposed New Antennas	Proposed Antenna Size
7WDC002A	Roof Top Mount	1680 35th Street, NW	R-3	3	69' (one sector) 75' (two sectors)	3	3	0	56" H x 12" W x 8" D
7WDC004A	Roof Top Mount	5255 Loughboro Rd NW	R-5-A	3	86'	3	3	3	56" H x 12" W x 8" D
7WDC021A	Roof Top Mount	1700 East Capitol Street, N.E.	R-4	6	83' (two sectors) 87' (one sector)	6	6	One (1) Microw ave Dish	56" H x 12" W x 8" D
7WDC158B	Roof Top Mount	2550 M Street, NW	CR	8	111' (one sector) 121' 7" (two sectors)	6	6	0	56" H x 12" W x 8" D
7WDC180D	Roof Top Mount	4601 Martin Luther King Avenue, S.E.	R-5-A	6	52' (one sector) 61' (two sectors)	6	6	0	56" H x 12" W x 8" D
7WDC193J	Roof Top Mount	101 Independence Avenue, S.E.	R-4	6	114' 2"	3	3	3	56" H x 12" W x 8" D
7WDC083A	Smokestack	2500 Benning Road, N.E.	R-5-A	9	98'	3	3	3	56" H x 12" W x 8" D
7WDC163C	Smokestack	501 Riggs Road, N.E.	R-2	6	68' 11"	6	6	0	56" H x 12" W x 8" D
7WDC181B	Smokestack	1820 Monroe Street NE	R-1-B	3	65'	3	3	0	56" H x 12" W x 8" D
7WDC189D	Roof Top Mount	2701 Naylor Road, S.E. (AKA 2745)	R-5-A	5	41' 6" (one sector) 59' 10" (two sectors)	4	4	2	56" H x 12" W x 8" D
7WDC176B	Smokestack	4400 Iowa Avenue NW	R-4	3	98' 9"	3	3	0	56" H x 12" W x 8" D

## II. OP ANTENNA



**TO:** Matt Le Grant, Zoning Administrator, Department of Consumer and Regulatory Affairs

**FROM:** Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

**DATE:**

**SUBJECT:** ANTENNA REVIEW RECOMMENDATION:

The Office of Planning (OP) recommends **APPROVAL** of the antenna installation at \_\_\_\_\_ pursuant to:

§ 2704 REQUIREMENTS FOR ROOF-MOUNTED ANTENNAS

§ 2705 REQUIREMENTS FOR BUILDING-MOUNTED ANTENNAS

§ 2706 ANTENNAS LOCATED IN STEALTH STRUCTURES

§ 2708 ANTENNAS MOUNTED ON ANTENNA TOWERS AND MONOPOLES

The intent of the antenna regulations is to ensure that antennas have as little visibility as possible from public space. The proposed installation would not be inconsistent with the intent of the Zoning Regulations.

### SITE INFORMATION

Square: \_\_\_\_\_ Lot: \_\_\_\_\_

Zone District: \_\_\_\_\_

Historic District: \_\_\_\_\_

Commission of Fine Arts area:      Yes      No

### PROPOSAL

The proposed installation includes:      MODIFICATION OF EXISTING SITE      NEW SITE

Panel Antennas # \_\_\_\_\_      Dish Antennas # \_\_\_\_\_      Other # \_\_\_\_\_      Type \_\_\_\_\_

An equipment cabinet would be installed:

On the roof      On the ground      In the building or penthouse      **OR**

An equipment cabinet would not be installed.      An existing equipment cabinet

### OP COMMENTS

NOTE: This report is a recommendation only and should not be interpreted as any form of final approval. This report does not provide any relief from the requirements of Title 11 DCMR, Zoning, or any other regulatory requirements.

JLS/kt

**III. DCRA’s ANTENNA REVIEW FORM**

**REQUEST FOR ZONING REVIEW  
ANTENNA**



Read the instructions on the back before completing this form.							
<b>Location of Antenna Installation</b>							
<b>1. Address:</b>			<b>2. Square:</b>	<b>3. Lot(s):</b>	<b>4. Zone:</b>		
<b>5. Antenna Type:</b>	<b>6. Existing</b>	<b>7. Proposed</b>	<b>8. Replacement</b>	<b>9. Roof Mounted</b>	<b>10. Bldg. Mounted</b>	<b>11. Ground Mounted</b>	
Dish _____							
GPS _____							
Panel _____							
Whip _____							
Yagi _____							
Commercial Broadcast _____							
Microwave Terrestrial _____							
Satellite Earth Station _____							
Super High Frequency _____							
Other _____							
Other _____							
<b>12. Accessory Equipment</b>		<b>13. Existing</b>	<b>14. Proposed</b>	<b>15. Replacement</b>	<b>16. Roof Mounted</b>	<b>17. Building Mounted</b>	
Equipment Cabinet _____							
Equipment Platform _____							
Screening Provided _____		Yes	No				
<b>18. Height</b>	<b>19. Grade to Roof</b>		<b>20. Curb to Roof</b>		<b>21. Roof to Parapet</b>		
Building Height _____	_____ Ft.		_____ Ft.		_____ Ft.		
Mounted Height _____	_____ Ft.		_____ Ft.		_____ Ft.		
<b>22. Stealth Structure</b>		<b>23. Existing</b>	<b>24. Proposed</b>	<b>25. Permit Checklist</b>			
Stealth Pole _____	# _____	# _____	# _____	OP Letter (Office of Planning) _____			
Monopole _____	# _____	# _____	# _____	RF Letter (Radio Frequency) _____			
Lattice Tower _____	# _____	# _____	# _____	Plans (Scaled) _____			
				Plans (Scaled) (Sheet # _____) _____			
				Elevation (Scaled) (Sheet # _____) _____			
<b>Owner/Agent Contact Person</b>		<b>E-Mail Address</b>		<b>Contact Phone #</b>			
NAME _____		_____		( ) _____			
(PRINTED NAME)		E-mail Address _____		( ) _____			
(SIGNATURE)		E-mail Address _____		_____			
<b>PERMIT CENTER</b>		<b>DO NOT WRITE BELOW THIS LINE (Office Use Only)</b>			<b>ZONING OFFICE</b>		
<input type="checkbox"/> OK to File _____					Job # ANT _____		
		(initials)					

IV. FCC GUIDELINES

# Installing Consumer-Owned Antennas and Satellite Dishes

## FCC Consumer Facts

### Background

In 1996, the Federal Communications Commission (FCC) adopted rules for Over-the-Air-Reception Devices (“OTARD” rules). The OTARD rules prohibit restrictions on a property owner or tenant’s right to install, maintain or use an antenna to receive video programming from direct broadcast satellites (DBS), broadband radio services (formerly referred to as multichannel multipoint distribution services or MMDS) and television broadcast stations (TVBS). However, there are exceptions to the OTARD rules, including provisions for safety and preservation of historic areas.

The FCC later amended the OTARD rules to apply to rental property where the renter has exclusive use of an area, and to customer-end antennas that receive and transmit fixed wireless signals.

### What Types of Antennas Are Covered Under the OTARD Rules?

The following antennas or dishes are covered by these rules:

- A "dish" antenna one meter (39.37 inches) or less in diameter (or any size dish if located in Alaska), designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.
- An antenna that is one meter or less in diameter and is designed to receive video programming services via broadband radio service (wireless cable), or to receive or transmit fixed wireless signals other than via satellite.
- An antenna that is designed to receive local television broadcast signals.

Antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services (“DARS”) or antennas used as part of a hub to relay signals among multiple locations are **not** covered by these rules.

### What Types of Properties Are Covered?

Under the OTARD rules, an owner or a tenant has the right to install an antenna (that meets size limitations) on property that he owns or over which he has exclusive use or control. This includes single family homes, condominiums, cooperatives, townhomes and manufactured homes. In the case of condominiums, cooperatives and rental properties, the rules apply to “exclusive use” areas, like terraces, balconies or patios. “Exclusive use” refers to an area of the property that only the renter and people allowed by the renter may enter and use. If the area is shared with others or accessible without the renter’s permission, it is not considered to be an exclusive use area.

OTARD rules **do not** apply to common areas that are owned by a landlord, a community association or jointly by condominium owners. These common areas may include the roof or exterior walls of a multiple dwelling unit. Under certain conditions, if a common antenna is available for use by residents, then the community association or landlord may prohibit the installation of an individually-owned antenna or satellite dish, provided the signal quality from the central antenna is as good as the signal quality from an individually-owned antenna or dish, and the costs of using the central antenna are no greater than the costs of an individually-owned antenna or dish.

(More)



**What kinds of restrictions are prohibited?**

Restrictions that prevent or delay installation, maintenance or use of antennas covered by the rule are prohibited. For example, in most cases, requirements to get approval before installing an antenna are prohibited.

**What kinds of restrictions are permitted?**

Restrictions necessary to prevent damage to leased property are permissible, as long as the restrictions are reasonable. For example, a lease restriction that forbids tenants from damaging the balcony floor when installing an antenna is likely to be permissible.

An association, landlord or local government may impose certain restrictions when safety is a concern or where a historic site is involved. An example of a permissible safety restriction would be requiring that an antenna is securely fastened down so that it will not be blown loose. Safety restrictions must be narrowly written so that they are no more burdensome than necessary to address a legitimate safety purpose.

If there is a conflict about a restriction’s validity, the association, landlord or local government trying to enforce the restriction must prove it is valid. This means that no matter who questions the validity of the restriction, the person or entity trying to enforce the restriction must prove that it is legitimate.

**Filing a Petition about an Antenna Restriction**

If you believe an antenna restriction is invalid, first try to resolve it with the restricting person or entity (the association, landlord or local government). If you are unable to resolve it directly, you can file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction.

There is no particular form used for filing a petition with the FCC. Your petition, at a minimum, should include:

- a description of the facts, including the restriction you’re disputing;

**Filing a Petition about an Antenna Restriction (cont’d.)**

- contact information for all parties involved in the dispute;
- copies of the exact language of the restriction; and
- any relevant correspondence.

You must include a “proof of service” with your petition. A proof of service is a statement indicating that on the same day that you filed your petition with the FCC, you provided a copy of the petition and any attachments to the person or entity trying to enforce the antenna restriction. The proof of service should indicate the name and address of the parties served, the date they were served, and the method of service, such as regular mail, personal delivery service or certified mail.

**Note:** All allegations of fact included in petitions must be supported by an affidavit signed by one or more people who have actual knowledge of the facts. You must send an original and four copies of the petition and all attachments to:

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554.

**ATTENTION: Media Bureau (on envelope & 1<sup>st</sup> page of Petition)**

You may continue to use your antenna while the petition is pending, unless the restriction you are challenging concerns safety or historic preservation.

**Installation Requirements for Fixed Wireless Antennas that Receive and Transmit**

The FCC requires fixed wireless antennas capable of receiving and transmitting voice and data services to meet certain guidelines regarding radiation exposure limits and environmental standards. Because of these guidelines, requirements that fixed wireless antennas be professionally installed are permissible. (More)

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